

### **REMARKS/ARGUMENTS**

In response to the Office Action mailed April 12, 2007, Applicants amend their application and request reconsideration in view of the amendments and the following remarks. In this amendment, Claim 7 is amended, no new claims have been added and claims 1–6 have been cancelled without prejudice so that Claims 7-14 remain pending. No new matter has been introduced.

Claims 1 and 7 were rejected as being anticipated by U.S. Patent No. 6,248,129 to Froix. This rejection is respectfully traversed.

Anticipation exists only if all of the elements of the claimed invention are present in a system or method disclosed, expressly or inherently, in a single prior art reference. Therefore, if it can be shown that there is one difference between the claimed invention and what is disclosed in the single reference, there can be no anticipation.

Froix discloses a polymeric stent. The polymeric stent carries and delivers drugs. In order to enhance ingrowth of internal and endothelial vessel tissue into the stent, the stent may be made of a porous material to enhance compatibility of the stent with the vessel. The stent can have the drug incorporated in a polymeric matrix or the material itself.

Froix fails to disclose a metallic stent with a polymeric matrix with a radioprotective compound configured to reach local cells and not proliferative cells. Since these elements are not present, there can be no anticipation. Accordingly, reconsideration and withdraws of the rejection is respectfully requested.

Claims 1-7 and 12-14 were rejected as being anticipated by U.S. Patent Application No. 2003/0220297 to Bernstein et al. (Bernstein). This rejection is respectfully traversed.

Bernstein discloses a drug-eluting stent. However, as described above, Bernstein fails to disclose a metallic stent, with a radioprotective compound in a polymer affixed via a polymeric matrix, all configured to reach local cells not proliferative cells. Accordingly, reconsideration and withdrawal of the rejection is respectfully requested.

Claims 8-11 were rejected as being unpatentable over Bernstein in view of U.S. Patent Publication No. 2003/0153983 to Miller et al. This rejection is respectfully traversed.

The MPEP, in section 706.02(j), sets forth the basic criteria that must be met in order to establish a *prima facie* case of obviousness.

“To establish a *prima facie* case of obviousness, three basic criteria must be met.

First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art

and not based on applicant's disclosure. In re Vaeck, 947 F.2d,488,20 USPQ2d 1438 (Fed.Cir. 1991). See MPEP § 2143 - § 2143.03 for decisions pertinent to each of these criteria.”

Section 2143.03 of the MPEP clarifies certain criteria in section 706.02(j).

“To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1074). “All words in a claim must be considered in judging the patentability of that claim against the prior art.” *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988).”

None of the references, whether taken alone or in combination disclose or suggest the subject matter claimed in independent Claim 7 as described above. Accordingly, all claims which depend therefrom are allowable over the cited art for the reasons given above. Accordingly, reconsideration and withdrawal of the rejection is respectfully requested.

A favorable action on the merits is earnestly solicited.

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Respectfully submitted,

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